

**CLAIM AMENDMENTS**

Claims 1-22 (Canceled)

23. (Currently Amended) An isolated polynucleotide ~~have~~having the polynucleotide sequence set forth in Fig. 25 (SEQ ID NO:16),~~a fragment or a derivative thereof~~.
24. (Currently Amended) An isolated polynucleotide that specifically hybridizes under highly stringent conditions with the polynucleotide of claim 23.
25. (Previously Presented) An isolated polynucleotide that is an antisense polynucleotide sequence of claim 23.
26. (Previously Presented) An isolated polynucleotide that is complementary to the polynucleotide sequences of claims 23 or 24.

**REMARKS**

Claims 23-26 are pending in the present application. Claims 23 and 24 have been amended without prejudice and without acquiescence. Support for the amendments can be found in the Specification on page 13 (lines 3-4) and Fig. 25, page 17 (lines 19-25), page 35 (line 30). Claim 25 contains allowable subject matter. Claims 19-22 have been canceled without prejudice and without acquiescence. Applicants retain the right to file a continuation and/or a divisional application to any canceled claims. No new matter has been added.

The issues outstanding in this application are as follows:

- Claim 23 was rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Burglin et al. (Genes Dev., 1987).
- Claims 24 and 26 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Fu et al. (US Pat No. 6090620, filing date December 1996).

Applicants respectfully traverse the outstanding rejections, and Applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

**I. Rejection under 35 U.S.C. § 102(b)**

Claim 23 is rejected under 35 U.S.C. § 102(b) as being anticipated by Burglin et al. (Genes Dev., 1987). Applicants respectfully traverse.

Anticipation of a claim is only established where “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987).

In order to further the prosecution of the present application, Applicants have amended claim 23 without acquiescence and prejudice to indicate that the present invention teaches an isolated polynucleotide having the polynucleotide sequence set forth in Fig. 25 (SEQ ID NO:16). Therefore, because Burglin et al. does not teach the polynucleotide sequence set forth in Fig. 25 (SEQ ID NO:16), Burglin et al. is precluded from anticipating the present claim 23. In light of the above argument, Applicants respectfully request withdrawal of the rejection.

**II. Rejection under 35 U.S.C. § 102(e)**

Claims 24 and 26 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fu et al. (US Pat No. 6090620, filing date December 1996). Applicants respectfully traverse.

Anticipation of a claim is only established where “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987).

In order to further the prosecution of the present application, Applicants have amended claim 24 without acquiescence and prejudice to indicate that the present invention teaches an isolated polynucleotide that specifically hybridizes under highly stringent conditions with the polynucleotide of claim 23. One of ordinary skill in the art recognizes that the polynucleotide sequence of Fu et al. will not specifically hybridize with the polynucleotide sequence of claim 23 under highly stringent conditions. Therefore, Fu et al. is

precluded from anticipating the present claim 24. Thus, Applicants respectfully request withdrawal of the rejection.

Claim 26 teaches an isolated polynucleotide that is complementary to the polynucleotide sequences of claims 23 or 24. Therefore, in order to further the prosecution of the present application, Applicants have amended claims 23 and 24 without acquiescence and prejudice as described above. Because claim 26 further includes the limitations of claims 23 or 24, Fu et al. is precluded from anticipating the present claim 26. Thus, Applicants respectfully request withdrawal of the rejection.

### **CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicants believe a fee is due for multiple-dependent claims, for which a check in the amount of \$290.00 is enclosed with this response. If additional fees are due, please charge our Deposit Account No. 06-2375, under Order No. 09807797 from which the undersigned is authorized to draw.

Dated: October 23, 2003

Respectfully submitted,

By 

Melissa W. Acosta

Registration No.: 45,872

FULBRIGHT & JAWORSKI L.L.P.

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

(713) 651-5407

(713) 651-5246 (Fax)